

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sara Griffin	Team: APU	CCRB Case #: 201706642	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 08/11/2017 9:30 PM	Location of Incident: East 165th Street and Melrose Avenue	Precinct: 42	18 Mo. SOL 2/11/2019	EO SOL 2/11/2019	
Date/Time CV Reported Fri, 08/11/2017 10:35 PM	CV Reported At: Precinct	How CV Reported: In-person	Date/Time Received at CCRB Fri, 08/11/2017 11:12 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Lamont Gibson	05355	944594	PSA 7
2. POM Phillip Pena	11192	956156	PSA 7
3. POM Pasquale Dethomas	11005	955873	PSA 7
4. POM Nicholas Rios	06583	955377	PSA 7
5. POM Felix Baez	04759	953654	PSA 7

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Joseph Walsh	1188	942685	PSA 7

Officer(s)	Allegation	Investigator Recommendation
A.SGT Lamont Gibson	Abuse: Sergeant Lamont Gibson stopped § 87(2)(b)	
B.SGT Lamont Gibson	Abuse: Sergeant Lamont Gibson stopped § 87(2)(b)	
C.POM Phillip Pena	Abuse: Police Officer Phillip Pena stopped § 87(2)(b)	
D.POM Phillip Pena	Abuse: Police Officer Phillip Pena stopped § 87(2)(b)	
E.POM Pasquale Dethomas	Abuse: Police Officer Pasquale Dethomas stopped § 87(2)(b)	
F.POM Pasquale Dethomas	Abuse: Police Officer Pasquale Dethomas stopped § 87(2)(b)	
G.POM Pasquale Dethomas	Force: Police Officer Pasquale Dethomas used physical force against § 87(2)(b)	
H.SGT Lamont Gibson	Force: Sergeant Lamont Gibson used physical force against § 87(2)(b)	
I.POM Phillip Pena	Force: Police Officer Phillip Pena struck § 87(2)(b) with a vehicle.	
J.POM Felix Baez	Force: Police Officer Felix Baez struck § 87(2)(b) with a vehicle.	
K.POM Nicholas Rios	Force: Police Officer Nicholas Rios used physical force against § 87(2)(b)	
L.POM Nicholas Rios	Force: Police Officer Nicholas Rios used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
M.POM Nicholas Rios	Force: Police Officer Nicholas Rios restricted § 87(2)(b) s breathing.	
N.POM Nicholas Rios	Abuse: Police Officer Nicholas Rios searched § 87(2)(b)	
O.POM Nicholas Rios	Abuse: Police Officer Nicholas Rios searched § 87(2)(b) s backpack.	
P.SGT Lamont Gibson	Abuse: Sergeant Lamont Gibson searched § 87(2)(b) s backpack.	
§ 87(2)(g), § 87(4-b)		

Case Summary

On August 11, 2017, § 87(2)(b) filed the following complaint in person at the Police Service Area 7 stationhouse. § 87(2)(b) filed the complaint on behalf of her two sons, § 87(2)(b) 16, and § 87(2)(b) 13. On August 11, 2017, § 87(2)(b)'s complaint was faxed from PSA 7 to the CCRB.

On August 11, 2017, at 9:30PM, § 87(2)(b) and § 87(2)(b) were walking down Melrose Avenue in the Bronx when they were allegedly stopped by Sergeant Lamont Gibson, Police Officer Phillip Pena, and Police Officer Pasquale Dethomas of Police Service Area 7 (**Allegations A to Allegation F: Abuse of Authority**, § 87(2)(g). As § 87(2)(b) and § 87(2)(b) ran down Melrose Avenue, PO Dethomas and Sgt. Gibson allegedly used force against § 87(2)(b) (**Allegation G and Allegation H: Force**, § 87(2)(g). PO Pena allegedly struck § 87(2)(b) with his vehicle (**Allegation I: Force**, § 87(2)(g). Police Officer Felix Baez of Police Service Area 7 allegedly struck § 87(2)(b) with his vehicle (**Allegation J: Force**, § 87(2)(g). Police Officer Nicholas Rios of Police Service Area 7 allegedly forced § 87(2)(b) to the ground (**Allegation K: Force**, § 87(2)(g). PO Rios allegedly stomped on § 87(2)(b)'s back and chest with his foot (**Allegation L: Force**, § 87(2)(g) and allegedly restricted § 87(2)(b)'s breathing (**Allegations M: Force**, § 87(2)(g). PO Rios allegedly searched inside § 87(2)(b)'s pants pocket and backpack (**Allegation N and Allegation O: Abuse of Authority**, § 87(2)(g). Sgt. Gibson allegedly searched § 87(2)(b)'s backpack (**Allegation P: Abuse of Authority**: § 87(2)(g), § 87(4-b), § 87(2)(g)).

No one was arrested or summonsed as a result of this incident.

There is no video evidence in this case.

Findings and Recommendations

Allegation A - Abuse of Authority: Sergeant Lamont Gibson stopped § 87(2)(b)

Allegation B - Abuse of Authority: Sergeant Lamont Gibson stopped § 87(2)(b)

Allegation C - Abuse of Authority: Police Officer Phillip Pena stopped § 87(2)(b)

Allegation D - Abuse of Authority: Police Officer Phillip Pena stopped § 87(2)(b)

Allegation E - Abuse of Authority: Police Officer Pasquale Dethomas stopped § 87(2)(b)

Allegation F - Abuse of Authority: Police Officer Pasquale Dethomas stopped § 87(2)(b)

It is undisputed that § 87(2)(b) and § 87(2)(b) were walking on the sidewalk on Melrose Avenue in the Bronx. It is undisputed that after officers exited their vehicle and attempted to stop them, § 87(2)(b) and § 87(2)(b) fled on foot. It is undisputed that officers pursued § 87(2)(b) and § 87(2)(b) on foot and in their unmarked vehicles before eventually physically stopping them.

§ 87(2)(b) and § 87(2)(b) were generally consistent in their statements (Board Review 1 and Board Review 2). § 87(2)(b) and § 87(2)(b) were solely walking on the sidewalk. § 87(2)(b) was wearing a Disney "Frozen" backpack that only contained diapers and food. § 87(2)(b) and § 87(2)(b) did not have anything in their pockets. An unmarked vehicle

without emergency lights pulled up next to them. Sgt. Gibson, PO Dethomas, and one or two additional officers exited the vehicle and approached them. None of the officers identified themselves as police or had their shields visible. The officers encircled § 87(2)(b) and § 87(2)(b) fled on foot up Melrose Avenue. Officers chased after § 87(2)(b) and § 87(2)(b) and eventually physically stopped them.

The narrative sections of § 87(2)(b) and § 87(2)(b) s medical records (Board Review 19 and 20) from the day after the incident are consistent with their CCRB testimonies.

Sgt. Gibson's testimony (Board Review 3) is as follows. Sgt. Gibson was seated in the front passenger seat of the first of two Anti-Crime vehicles involved in this incident, when he observed § 87(2)(b) and § 87(2)(b) appear to pass something between each other that was indicative of a drug transaction. Sgt. Gibson was unable to see if anything was exchanged. Sgt. Gibson also noticed a round bulge in § 87(2)(b) s backpack that weighed it down. Sgt. Gibson was unable to estimate the size of the bulge. Sgt. Gibson believed the bulge was a firearm, but stated the bulge could have been anything. Sgt. Gibson did not see any additional bulges on § 87(2)(b) or § 87(2)(b). Sgt. Gibson exited the vehicle with his shield displayed and stated, "Police, don't move." § 87(2)(b) and § 87(2)(b) fled on foot. Sgt. Gibson pursued them.

PO Pena's testimony (Board Review 4) is as follows. PO Pena was the driver of the first Anti-Crime vehicle. PO Pena observed a rectangular bulge, about five to ten inches long, in the right front pants pocket of either § 87(2)(b) or § 87(2)(b). PO Pena believed the bulge was a firearm or other weapon such as a knife or blackjack. No part of the bulge was protruding from the pants. The individual with the bulge disguised the bulge by pulling up his pants with two hands, one on each side. Other than the bulge, there was no other reason to stop § 87(2)(b) or § 87(2)(b). Sgt. Gibson and PO Dethomas exited the vehicle. PO Pena did not recall what Sgt. Gibson and PO Dethomas said when they exited. PO Pena began to exit the vehicle but returned inside when they ran.

PO Dethomas's testimony (Board Review 5) is as follows. PO Dethomas was seated in the rear passenger seat of the first Anti-Crime vehicle when he noticed a bulge in the right side of § 87(2)(b) s waist band. § 87(2)(b) appeared to be walking awkwardly by favoring one side and was holding onto the right side of his waist band. The bulge was bulky and awkward but PO Dethomas was unable to estimate its size or shape since § 87(2)(b) s shirt covered the bulge. PO Dethomas suspected the bulge to be a firearm based on "the area he works in and when people walk in a weird direction or weird pattern, he has encountered several incidents where it was a firearm." Sgt. Gibson and PO Dethomas exited the vehicle. PO Dethomas stated, "Police, don't move" with his shield displayed. § 87(2)(b) and § 87(2)(b) fled on foot, and PO Dethomas pursued them on foot.

PO Baez's testimony (Board Review 6) is as follows. PO Baez was the driver of the second Anti-Crime vehicle and was following behind the first Anti-Crime vehicle. PO Baez did not personally observe any bulge. PO Rios (Board Review 7), who was with PO Baez, testified that he did not observe any bulge.

Stop Reports were completed by both PO Pena and PO Dethomas. PO Dethomas's Stop Report (Board Review 8) narrative states, "At T/P/O defendant was stopped during approach to unrelated male, defendant grabbed his waist band adjusting what seemed to be a heavy object and began running, then fell a short distance after the initial stop." The pedigree information listed for the person stopped matches that

of § 87(2)(b) PO Pena's Stop Report (Board Review 9) narrative states, "While I was approaching a separate, unrelated male, subject did grab his book bag, then displayed a bulge and fled into oncoming traffic...I reasonably suspected that the male was in possession of a firearm." The pedigree information listed for the person stopped matches that of § 87(2)(b)

No weapon or contraband was ultimately recovered.

A person is considered stopped if a reasonable person in the same situation would believe that the officers' conduct was a significant limitation of their freedom. People v. Hicks, 68 N.Y.2d 234, 240 (1986) (Board Review 42).

A stop may be conducted only when a police officer has an individualized reasonable suspicion that the person stopped has committed, is committing, or is about to commit a crime. NYPD Patrol Guide, Procedure 212-11 (Board Review 10); People v. DeBour, 40 N.Y.2d 210 (1976) (Board Review 11). The observation of a mere bulge or heavy object in a pocket does not impel a reasonable conclusion that the defendant was armed. People v. Williams, 79 A.D.2d 147 (1981) (Board Review 12). An unidentified bulge in a defendant's pocket and the defendant's flight does not justify a stop. People v. Holmes, 81 N.Y.2d 1056 (1993) (Board Review 13). An officer must observe actual narcotics or currency exchanged in order to have reasonable suspicion that a hand-to-hand transaction occurred, even when an officer has training to identify drug transactions and the observation occurs at a location known for such transactions. People v. Loper 115, A.D.3d 875 (2014) (Board Review 14).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation G - Force: Police Officer Pasquale Dethomas used physical force against § 87(2)(b)

Allegation H - Force: Sergeant Lamont Gibson used physical force against § 87(2)(b)

It is undisputed that § 87(2)(b) and § 87(2)(b) fled on foot once the officers exited the vehicle. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)'s testimony (Board Review 2) is as follows. PO Dethomas caught up with § 87(2)(b) while he ran and dropped his shoulder and rammed it into § 87(2)(b)'s left shoulder. § 87(2)(b) fell to the ground. § 87(2)(b) got up and continued to run. Sgt. Gibson, who was in front of § 87(2)(b) stuck his foot out and tripped him, which caused § 87(2)(b) to fall to the ground. § 87(2)(b) scraped his arm and knee when he fell to the ground. The narrative section of § 87(2)(b)'s medical records (Board Review 20) is consistent with his CCRB testimony.

§ 87(2)(b) testified (Board Review 1) that he was running ahead of § 87(2)(b) but that he twice turned around and saw § 87(2)(b) getting up from the ground. § 87(2)(b) did not see what caused § 87(2)(b) to fall. The narrative section of § 87(2)(b)'s medical records (Board Review 19) is consistent with his CCRB testimony.

PO Dethomas's testimony (Board Review 5) is as follows. § 87(2)(b) fell to the ground before any officer made contact with him. PO Dethomas did not know what caused § 87(2)(b) to fall. PO Dethomas denied using any force to bring § 87(2)(b) to the ground. PO Dethomas denied

seeing Sgt. Gibson use any force against § 87(2)(b) PO Dethomas's Stop Report (Board Review 8) narrative is consistent with his testimony that § 87(2)(b) fell upon approach.

Sgt. Gibson's testimony (Board Review 3) is as follows. PO Dethomas was able to stop § 87(2)(b) but Sgt. Gibson was unable to recall exactly how. § 87(2)(b) was standing up when he was stopped by PO Dethomas. Sgt. Gibson did not observe PO Dethomas use any force to stop § 87(2)(b). Sgt. Gibson denied tripping or using any physical force against § 87(2)(b).

§ 87(2)(g) Both officers were inside their vehicle pursuing § 87(2)(b) and were not observing § 87(2)(b).

PO Rios's testimony (Board Review 7) is as follows. PO Rios pursued § 87(2)(b) on foot. PO Rios did not see any officer trip or make physical contact with § 87(2)(b).

A Threat, Injury, and Resistance Report (T.R.I.) was completed by Sgt. Gibson in regards to the alleged force against § 87(2)(b) (Board Review 15). The "Reporting MOS" was PO Rios. "Pushed subject" was listed as the actions taken by MOS. PO Rios claimed the T.R.I was not accurate.

The CCRB complaint, taken by Sergeant Jamie Walsh, on the same night as the incident, indicates that there were minor abrasions to § 87(2)(b)'s elbow (Board Review 17). Swelling and abrasions to the left elbow and right knee were also noted in § 87(2)(b)'s medical records (Board Review 20).

§ 87(2)(b), § 87(2)(g)
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Allegation I - Force: Police Officer Phillip Pena struck § 87(2)(b) with a vehicle.

It is undisputed that PO Pena pursued § 87(2)(b) and § 87(2)(b) by vehicle § 87(2)(b), § 87(2)(g).

§ 87(2)(b)'s testimony (Board Review 2) is as follows. § 87(2)(b) was running through an intersection when an unmarked vehicle's front headlights struck him in the left rib cage, forcing him to the ground. He was unable to estimate how fast the vehicle was traveling when it struck him.

§ 87(2)(b) did not testify that he witnessed a vehicle strike § 87(2)(b) (Board Review 1).

PO Pena's testimony (Board Review 4) is as follows. PO Pena drove behind the second Anti-Crime vehicle as it pursued one of the fleeing suspects. PO Pena denied his vehicle made contact with the individual he was pursuing.

Sgt. Gibson's testimony (Board Review 3) is as follows. After running approximately 20 feet, § 87(2)(b) was stopped by PO Dethomas. Sgt. Gibson did not recall exactly how PO Dethomas stopped § 87(2)(b) but stated that § 87(2)(b) was standing up.

PO Dethomas's testimony (Board Review 5) is as follows. Upon approach, § 87(2)(b) fell to the ground. PO Dethomas did not know what caused § 87(2)(b) to fall to the ground. PO Dethomas denied seeing a police vehicle make contact with § 87(2)(b) or seeing § 87(2)(b) run into a police vehicle.

PO Baez and PO Rios both testified (Board Review 6 and 7) that they pursued § 87(2)(b) and did not see what happened to § 87(2)(b).

According to § 87(2)(b)'s Medical Records (Board Review 20), he stated that, "he fell twice cause they tripped him, and once fell against a parked car on his left side, and fell on the pavement on left side with arm catching the fall." It does not mention being struck by a car. The narrative in § 87(2)(b)'s Medical Records (Board Review 19) mentioned that § 87(2)(b) fell, but no additional information was provided, nor was a vehicle mentioned.

§ 87(2)(b), § 87(2)(g)
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§ 87(2)(b)

Allegation J - Force: Police Officer Felix Baez struck § 87(2)(b) with a vehicle.

It is undisputed that PO Baez pursued § 87(2)(b) in a vehicle. It is undisputed that PO Baez cut off § 87(2)(b)'s path as he ran, and cornered him between a parked vehicle and his own vehicle. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)'s testimony (Board Review 1) is as follows. As § 87(2)(b) ran, PO Baez drove towards him to cut off his path, which caused him to run into the vehicle. § 87(2)(b) attempted to run around the vehicle, but PO Baez cornered him between his vehicle and a parked van. § 87(2)(b) clarified after the interview, through email via his attorney (Board Review 22), that PO Baez used the vehicle to push § 87(2)(b) against the parked van and PO Baez tapped him two times on his thighs with the vehicle.

§ 87(2)(b)'s testimony (Board Review 2) was generally consistent with § 87(2)(b)'s.

PO Baez's testimony (Board Review 6) is as follows. PO Baez followed behind § 87(2)(b) as he ran in the road. PO Baez was able to "box in" § 87(2)(b) between his vehicle and a parked vehicle. PO Baez denied that his vehicle made contact with § 87(2)(b) but did not recall if § 87(2)(b) ran into his vehicle.

PO Rios's testimony (Board Review 7) is as follows. PO Baez's moving vehicle cut off § 87(2)(b) as he was running. It appeared § 87(2)(b) ran into PO Baez's vehicle, with § 87(2)(b)'s lower body making contact with the vehicle. PO Rios was unable to estimate how fast PO Baez's vehicle was traveling, but § 87(2)(b) appeared to stumble in response to running into the vehicle. PO Rios did not recall if PO Baez boxed § 87(2)(b) between a parked vehicle, but denied seeing PO Baez strike § 87(2)(b) with the vehicle.

§ 87(2)(g) No officer saw PO Baez strike § 87(2)(b) with the vehicle or § 87(2)(b) run into the vehicle.

According to § 87(2)(b)'s Medical Records (Board Review 19), he alleged "they tapped him with the car twice, against his [right] leg." A small abrasion was noted on the right leg from allegedly being tapped by the vehicle.

§ 87(2)(b), § 87(2)(g)
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Allegation K - Force: Police Officer Nicholas Rios used physical force against § 87(2)(b)

After § 87(2)(b) was stopped, it is undisputed that he ended up on the ground. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)'s testimony (Board Review 1) is as follows. After being cornered by the police vehicle, PO Rios caught up with § 87(2)(b). PO Rios asked § 87(2)(b) why he ran and § 87(2)(b) replied he was scared. PO Rios stated, "Oh, it's the police," before he grabbed § 87(2)(b) from behind, lifted him off the ground, and slammed him down. The left side of § 87(2)(b)'s body made contact with the ground, while PO Rios remained standing.

§ 87(2)(b), § 87(2)(g)
§ 87(2)(b) In the initial CCRB complaint filed the same night as the incident (Board Review 25), § 87(2)(b) alleged he was "thrown to the floor." § 87(2)(b)'s Medical Records (Board Review 19) only note that he fell between two cars.

§ 87(2)(b) did not testify that he witnessed PO Rios force § 87(2)(b) to the ground (Board Review 2), but the two were reportedly stopped more than a block apart.

PO Rios's testimony (Board Review 7) is as follows. Once PO Rios caught up with § 87(2)(b) § 87(2)(b) was attempting to run away. PO Rios stated, "Police, don't move." PO Rios attempted to grab § 87(2)(b) and they both stumbled, and § 87(2)(b) "wound up on the ground." PO Rios did not recall where exactly on § 87(2)(b)'s body he grabbed. PO Rios believed the momentum from running full speed, getting cut off by the vehicle, and running into the vehicle caused

§ 87(2)(b) to end up on the ground. PO Rios's momentum also caused him to fall to the ground. PO Rios denied forcibly bringing § 87(2)(b) to the ground.

Sgt. Gibson's testimony (Board Review 3) is as follows. When Sgt. Gibson caught up to where § 87(2)(b) was stopped, § 87(2)(b) was standing up. Sgt. Gibson denied seeing § 87(2)(b) on the ground. § 87(2)(b) informed Sgt. Gibson that he had been taken to the ground, but Sgt. Gibson did not learn any more details.

PO Pena's testimony (Board Review 4) is as follows. PO Pena exited his vehicle, and § 87(2)(b) was on the ground and lying on his side. PO Pena did not recall how § 87(2)(b) ended up on the ground. PO Pena did not recall seeing any officer force § 87(2)(b) to the ground.

PO Dethomas's testimony (Board Review 5) is as follows. After stopping § 87(2)(b) PO Dethomas and § 87(2)(b) walked approximately one block to where § 87(2)(b) was stopped by PO Rios and PO Baez. § 87(2)(b) was standing up. PO Dethomas did not know if force was used against § 87(2)(b).

PO Baez's testimony (Board Review 6) is as follows. After boxing in § 87(2)(b) between the vehicles, PO Baez exited his vehicle, and § 87(2)(b) was already on the ground. PO Rios had taken § 87(2)(b) to the ground, but PO Baez did not see how. PO Baez did not see § 87(2)(b) act in a manner which warranted being taken to the ground by PO Rios. PO Baez did not see § 87(2)(b) struggle with PO Rios and did not recall § 87(2)(b) being aggressive.

A Threat, Injury, and Resistance Report (T.R.I.) completed by Sgt. Gibson indicates that there was a forcible takedown of § 87(2)(b) (Board Review 23). PO Rios was the reporting MOS. The T.R. I. was presented during Sgt. Gibson's and PO Rios's interviews (Board Review 7 and 3). Sgt. Gibson stated that he filled out the form after completing his investigation and did not recall what PO Rios told him regarding the force. PO Rios denied that he told Sgt. Gibson that he used force. The T.R.I. did not aid in refreshing PO Rios's recollection about the incident.

As stated in Patrol Guide Procedure 221-01 (Board Review 24), an officer's use of force must be reasonable under the circumstances. The reasonableness of the use of force by a police officer is determined by the following factors:

- a. The nature and severity of the crime/circumstances
- b. Actions taken by the subject
- c. Duration of the action
- d. Immediacy of the perceived threat or harm to the subject, members of the service and/or bystanders
- e. Whether the subject is actively resisting custody
- f. Whether the subject is attempting to evade arrest by flight
- g. Number of subjects in comparison to the number of MOS
- h. Size, age, and condition of the subject in comparison to the MOS
- i. Subject's violent history, if known
- j. Presence of hostile crowd or agitators

- k. Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.

§ 87(2)(b), § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

§ 87(2)(b), § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation L - Force: Police Officer Nicholas Rios used physical force against § 87(2)(b)

Allegation M - Force: Police Officer Nicholas Rios restricted § 87(2)(b)'s breathing.

It is undisputed that after being stopped by PO Baez and PO Rios, § 87(2)(b) ended up on the ground. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)'s testimony (Board Review 1) is as follows. After PO Rios took him to the ground, § 87(2)(b) laid on his back. PO Rios placed a foot on the center of § 87(2)(b)'s chest. PO Rios turned him over onto his chest and placed him in handcuffs without struggle. PO Rios then stomped on § 87(2)(b)'s lower back, upper left shoulder, and upper right shoulder. § 87(2)(b) struggled to breathe. § 87(2)(b) clarified via email through his attorney (Board Review 27) that his difficulty in breathing was due to PO Rios placing his foot on § 87(2)(b)'s chest and being out of breath from running.

In the initial CCRB complaint (Board Review 25) filed on the date of incident, § 87(2)(b) alleged his chest was stomped on. § 87(2)(b)'s narrative in the ISAR (Board Review 21) was consistent that an officer stepped on his chest.

§ 87(2)(b)'s testimony (Board Review 2) is as follows. § 87(2)(b) saw an officer, who the investigation determined to be PO Rios, place his foot on § 87(2)(b)'s chest. PO Rios stomped one time on § 87(2)(b)'s chest before continuing to rest his foot on § 87(2)(b)'s chest. § 87(2)(b) yelled, "I can't breathe, I can't breathe, I can't breathe." PO Rios flipped § 87(2)(b) over onto his stomach and stomped on § 87(2)(b)'s back.

PO Rios's testimony (Board Review 7) is as follows. After § 87(2)(b) "wound up" on the ground, § 87(2)(b) was rolling around and refused to give PO Rios his arms. PO Rios did not recall if § 87(2)(b) was placed in handcuffs. PO Rios denied placing his foot on § 87(2)(b)'s chest or back. PO Rios denied hearing § 87(2)(b) complain of not being able to breathe.

Sgt. Gibson's testimony (Board Review 3) is as follows. Once Sgt. Gibson caught up with where § 87(2)(b) was stopped, § 87(2)(b) was standing up and was having difficulty breathing from running. Sgt. Gibson denied seeing any officer use force against § 87(2)(b).

PO Pena's testimony (Board Review 4) is as follows. § 87(2)(b) was handcuffed and on the ground when PO Pena exited his vehicle. § 87(2)(b) was gasping for air due to the foot pursuit. PO Pena did not see any officer place their foot on § 87(2)(b)'s chest or back.

PO Dethomas's testimony (Board Review 5) is as follows. § 87(2)(b) was standing up and speaking to the officers when PO Dethomas arrived. PO Dethomas denied hearing § 87(2)(b) complain of difficulty breathing. PO Dethomas did not know if force was used against § 87(2)(b).

PO Baez testified (Board Review 6) that he did not see PO Rios place his foot on § 87(2)(b)'s chest or back. PO Baez testified that he did not hear § 87(2)(b) complain of difficulty breathing.

In IAB Log # 2017-31397 (Board Review 26), Sgt. Walsh informed IAB via telephone that § 87(2)(b) did have a foot print on the back of his shirt.”

The T.R.I. does not mention a foot strike or stepping on § 87(2)(b) (Board Review 23).

§ 87(2)(b)'s Medical Records (Board Review 19) indicate that he complained that officers stomped on his back causing pain to his lower back. X-rays revealed no fractures or swelling.

As stated in Patrol Guide Procedure 221-01, an officer's use of force must be reasonable under the circumstances.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation N - Abuse of Authority: Police Officer Nicholas Rios searched § 87(2)(b)
Allegation O - Abuse of Authority: Police Officer Nicholas Rios searched § 87(2)(b)
backpack.

Allegation P - Abuse of Authority: Sergeant Lamont Gibson searched § 87(2)(b)'s backpack.

§ 87(2)(b), § 87(2)(g) Sgt.

Gibson testified to searching § 87(2)(b)'s backpack.

§ 87(2)(b) testified (Board Review 1) that after PO Rios stopped him, PO Rios searched inside his pants pockets then inside his backpack.

§ 87(2)(b) testified (Board Review 2) that he saw PO Rios remove items from inside the backpack. § 87(2)(b) did not testify to seeing PO Rios search § 87(2)(b)'s pants pockets.

PO Rios's testimony (Board Review 7) is as follows. PO Rios did not recall if he searched § 87(2)(b) s pants pockets. Once § 87(2)(b) stood up, PO Rios noticed a cylindrical bulge in the backpack that looked like a baton. PO Rios frisked the backpack. PO Rios did not feel a hard shape that would be associated with a weapon. PO Rios did not remember if he ever opened the backpack.

Sgt. Gibson's testimony (Board Review 3) is as follows. Sgt. Gibson did not see any officer searching § 87(2)(b) s pants pockets. Sgt. Gibson acknowledged opening § 87(2)(b) s backpack to look for weapons. Prior to opening the backpack, § 87(2)(b) told Sgt. Gibson that there were diapers inside. Sgt. Gibson denied frisking the backpack before opening it. As Sgt. Gibson previously testified, he noticed a round bulge in the backpack that weighed it down but was unable to estimate the size of the bulge. Sgt. Gibson believed the bulge was a firearm, but stated the bulge could have been anything. Sgt. Gibson did not recall if any other officer looked inside the backpack.

§ 87(2)(g)

PO Pena and PO Dethomas denied seeing any officer search § 87(2)(b) s pants pockets or backpack. PO Baez did not recall if any officer searched § 87(2)(b) s pants pockets and did not recall if the backpack was ever opened.

An officer must have probable cause to arrest in order to perform a search. People v. DeBour, 40 N.Y.2d 210 (1976) (Board Review 11). An officer who reasonably suspects that a detainee is armed may conduct a frisk or take other protective measures. People v. Graham, 134 A.D.3d 1047 (2015) (Board Review 27). A "weighted down" bag could contain any number of heavy articles and does not by its nature constitute a container indicative of contraband. People v. Hampton, 200 A.D.2d 466 (1994) (Board Review 28).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This was § 87(2)(b) s, § 87(2)(b) s, and § 87(2)(b) s first CCRB complaint (Board Review 31, 32, 33).
- Sgt. Gibson has been a member of the NYPD for 10 years, and is the subject of 11 prior CCRB complaints involving 36 allegations. In case # 201005227, a frisk and question allegations were substantiated by the Board and Charges were recommended. The NYPD imposed the penalty of Instructions. In case #201110762, a vehicle stop allegation was substantiated by the Board and Charges were recommended. The NYPD chose not to prosecute. In case #201510005, a gun pointed and nightstick as club allegations were substantiated by the Board and Command Discipline B was recommended. The NYPD chose not to implement discipline. Sgt. Gibson has one open CCRB complaint, #201708245, which is currently being investigated by Investigator Ralph of Squad 16. § 87(2)(g)
- PO Pena has been a member of the NYPD for four years, and is the subject of one prior CCRB complaint, involving two allegations. None of the allegations were substantiated. § 87(2)(g)
- PO Rios has been a member of the NYPD for four years and is the subject of four prior CCRB complaints involving 22 allegations. In case #201507072, a frisk allegation was substantiated by the Board and Command Discipline B was recommended. The NYPD imposed a penalty of Formalized Training. In case #201608892, two frisks, a refusal to provide name/shield, and a search of property allegations were substantiated by the Board and Command Discipline A was recommended. The NYPD's disposition has not been provided. § 87(2)(g)
- PO Dethomas has been a member of the NYPD for four years and has no prior CCRB complaints (Board Review 37).
- PO Baez has been a member of the NYPD for five years and is the subject of five prior CCRB complaints, involving 17 allegations. In case #201606760, a retaliatory arrest, discourteous word, and frisk allegations were substantiated by the Board and Command Discipline A was recommended. The NYPD chose not discipline PO Baez, as it was past statute of limitation. In

case #201607176, a stop allegation was substantiated by the Board and Command Discipline A was recommended. The NYPD upheld the Board's recommendation. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation, as § 87(2)(b) intended to file a lawsuit.
- On August 22, 2017, § 87(2)(b) filed a Notice of Claim on behalf of § 87(2)(b) and § 87(2)(b). No amount was claimed (Board Review 41).
- § 87(2)(b) and § 87(2)(b) have no criminal convictions in New York City (Board Review 39 and 40).

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date